IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SANDRA J. WALTON	:	CIVIL ACTION
	:	
v.	:	
	:	
MENTAL HEALTH ASSOCIATION OF SOUTHEASTERN PENNSYLVANIA	:	NO. 96-5682

O R D E R - M E M O R A N D U M

AND NOW, this 18th day of August, 1999, plaintiff Sandra J. Walton's motion for review of taxation of costs is denied. The judgment entered by the Clerk of Court on June 10, 1999 for costs taxed in favor of defendant Mental Health Association of Southeastern Pennsylvania and against plaintiff in the amount of $11,836.51 is affirmed.

In August, 1996 plaintiff instituted this ADA case following her termination from defendant's employ in 1994. On November 17, 1997, following the close of discovery, summary judgment was entered for defendant. On April 23, 1999 the Court of Appeals affirmed. On June 10, 1999, following a telephone conference, the Clerk awarded defendant $11,836.51 in costs.

Fed. R. Civ. P. 54(d) states that "except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course unless the court otherwise directs."[1] As the language of Rule 54 suggests, prevailing parties are

[1]Expenses that are subject to taxation are enumerated in 28 U.S.C. § 1920 and do not include attorneys' fees.

presumptively entitled to costs. See Delta Air Lines, Inc. v. August, 450 U.S. 346, 352, 101 S.Ct. 1146, 1150, 67 L.Ed.2d 287 (1981). Our Court of Appeals has explained:

> Under this rule, a prevailing party generally is entitled to an award of costs unless the award would be inequitable. . . . [T]he denial of costs to the prevailing party . . . is in the nature of a penalty for some defection on his part in the course of the litigation.

Smith v. Southeastern Pa. Transp. Auth., 47 F.3d 97, 99 (3d Cir. 1995) (quotations omitted).

Plaintiff does not dispute that defendant has prevailed in all prior proceedings or that the bill of costs was an accurate assessment of defendant's costs. According to plaintiff, she should not have to pay defendant's costs because (1) she has already had to pay in excess of $10,000 in her own costs and (2) such an award "puts her at imminent risk of a serious and possibly irreversible mental collapse." Pl. br. at 2.

Disparity in the parties' wealth is not a basis for reducing costs. See Smith, 47 F.3d at 99-100. Even a party proceeding in forma pauperis is not automatically exempted from taxation of costs. See id. at 100. Only actual inability to pay may be considered. See id. As in the Smith case, "the losing party in this case does not claim to be indigent, and the record does not establish that she is unable to pay the full measure of costs." Id. Plaintiff's own expenditure of costs, therefore, is not a good reason for denying defendant's bill of costs.

As to the potential effect on plaintiff's psychological condition, plaintiff has submitted medical reports from June 1993 to January 1997. None of these documents directly supports her argument, leaving only plaintiff's – or counsel's – personal opinion that the imposition of costs would result in her "mental collapse." Whether or not a finding to that effect would justify legally justify the relief that plaintiff requests, the information that she has proffered is insufficient.

Requiring the losing party to pay the prevailing party's costs can be a harsh rule – albeit fee-shifting statutes that operate in favor of plaintiffs and the English rule that makes the loser pay the winner's attorney's fees as well as costs can be vastly harsher. However, Rule 54 has been strictly enforced, and the court has no discretion to make the type of compassionate exception that plaintiff believes is imperative. Since the amount of money involved appears to be overwhelming to her, perhaps defendant should be persuaded, or at least grudgingly willing, to enter into a less demanding settlement.

Edmund V. Ludwig, J.